

1 ERIC B. KINGSLEY (SBN: 185123)
2 LIANE KATZENSTEIN LY (SBN: 259230)
3 KINGSLEY & KINGSLEY, APC
4 16133 Ventura Blvd., Suite 1200
5 Encino, CA 91436
6 Telephone: (818) 990-8300
7 Facsimile: (818) 990-2903
8 Eric@kingsleykingsley.com
9 Liane@kingsleykingsley.com

10 Attorneys for Plaintiff and the Proposed Class

11 MOLLIE M. BURKS (SBN: 222112)
12 HIEU T. WILLIAMS (SBN: 280585)
13 GORDON & REES SCULLY MANSUKHANI LLP
14 275 Battery Street, Suite 2000
15 San Francisco, CA 94111
16 Telephone: (415) 986-5900
17 Facsimile: (415) 986-8054
18 Mburks@grsm.com
19 Hwilliams@grsm.com

20 Attorneys for Defendant
21 HATHAWAY DINWIDDIE CONSTRUCTION COMPANY

22 SUPERIOR COURT OF THE STATE OF CALIFORNIA
23 FOR THE COUNTY OF SAN FRANCISCO

24 LUIS MORENO, an individual, on behalf of) CASE NO. CGC-16-554443
25 and others similarly situated)
26)
27 Plaintiff,) **FIFTH AMENDED JOINT**
28) **STIPULATION OF**
vs.) **CLASS ACTION SETTLEMENT**
) **AND RELEASE**
)
)
20 HATHAWAY DINWIDDIE)
21 CONSTRUCTION COMPANY; DOES 1)
22 thru 50, inclusive,) Complaint Filed: Sept. 22, 2016
23) Second Amended Complaint Filed: Aug.
24 Defendants.) 28, 2017
) Third Amended Complaint Filed: xx
) Judge: The Honorable Anne-Christine
Massullo

25 **FIFTH AMENDED STIPULATION RE: CLASS ACTION SETTLEMENT**
26 **AGREEMENT**

27 This FIFTH Amended Stipulation re: Class Action Settlement Agreement (the
28

1 “Agreement”), is entered into between Plaintiff Luis Moreno (“Plaintiff Moreno” or
2 “Representative Plaintiff”), individually, and on behalf of all others similarly situated (“Class
3 Members” as defined below), on one hand, and Defendant Hathaway Dinwiddie Construction
4 Company (“Defendant”) on the other hand (collectively the Representative Plaintiff, Class
5 Members, and Defendant are referred to as the “Parties”), in the lawsuit entitled *Luis Moreno,*
6 *et al. v. Hathaway Dinwiddie Construction, Co.* in the San Francisco County Superior Court,
7 Case No. CGC-16-554443 (the “Lawsuit”). This Agreement resolves all claims that were
8 asserted or could have been asserted against Defendant pertaining to the claims in the Lawsuit.

9 This Agreement was reached after a mediation before Mark S. Rudy, Esq., of Rudy,
10 Exelrod, Zieff, & Lowe, LLP and arms-length settlement negotiations between counsel for the
11 Parties. Before the mediation and negotiations, Defendant produced collective bargaining
12 agreements, an Employee Handbook, information and employee payroll data pertaining to the
13 putative Class Members sufficient to enable the Representative Plaintiff and his counsel, Eric
14 B. Kingsley and Liane Katzenstein Ly with Kingsley and Kingsley, APC (“Class Counsel”), to
15 rigorously evaluate the strengths and risks of the case and perform an analysis of the potential
16 damages arising from the claims made in this case.

17 This Agreement is intended by the Parties to fully, finally, and forever resolve,
18 discharge and settle the “Released Claims” (as defined below) pertaining to the “Released
19 Parties” (as defined below) upon and subject to the terms and conditions contained herein.
20 This Agreement, which is contingent upon Final Court approval, contains the essential terms
21 of the Parties’ agreement. The Representative Plaintiff and Class Counsel believe, and the
22 Parties have agreed, that the settlement set forth in this Agreement confers substantial benefits
23 upon the Class Members. Class Counsel has determined that the settlement set forth in this
24 Agreement is fair and reasonable to the Class Members and is in their best interest. The
25 Representative Plaintiff and Defendant have also settled the Representative Plaintiff’s
26 individual claims, the terms of which are also memorialized in this Agreement. Pursuant to
27 California Rule of Court 3.770, judgment shall be entered in the Lawsuit upon Final approval
28 of this Agreement and proposed settlement by the Court.

1 **I. THE LAWSUIT**

2 On September 22, 2016, Plaintiff Luis Moreno filed the instant class action against
3 Defendant, asserting the following claims on behalf of himself and the Class Members: (1)
4 Failure to Reimburse Expenses pursuant to Labor Code section 2802; (2) Failure to Provide
5 Itemized Wage Statements pursuant to Labor Code section 226(a); and (3) a violation of
6 Business and Professions Code section 17200. Plaintiff Moreno asserted a claim for Failure to
7 Provide Employment and Payroll records under Labor Code sections 226 and 1198.5, on
8 behalf of himself.

9 In the Lawsuit, Plaintiff Moreno sought for himself and Class Members damages,
10 interest, penalties, restitution, declaratory relief, and attorneys’ fees and costs.

11 On November 29, 2016, Plaintiff Moreno filed a First Amended Complaint (“FAC”),
12 adding a claim for penalties under the Private Attorney General Act of 2004 (“PAGA”), on
13 behalf of himself and Class members. The PAGA claim seeks penalties for the failure to
14 reimburse cell phone expenses under Labor Code section 2802 and the alleged inaccurate
15 wage statements under Labor Code section 226.7.

16 Defendant timely filed an answer to the FAC on February 16, 2017, asserting general
17 and affirmative defenses.

18 On April 12, 2017, this Court issued an Order that this case should be deemed complex
19 per rule 3.400 of the California Rules of Court.

20 On August 28, 2017, the Parties stipulated to the filing of a Second Amended
21 Complaint (“SAC”), wherein Plaintiff Moreno removed a typographical error referencing a
22 claim for violation of Labor Code section 203 in the FAC, which he was not asserting against
23 Defendant.

24 On September 25, 2017, the Parties executed a short-form Memorandum of
25 Understanding outlining the settlement terms agreed to through mediation.

26 The Parties executed a long-form Settlement in November 2017 and the Agreement has
27 been amended several times. This Agreement is intended to reflect the terms agreed to by the
28 Parties, including those terms previously agreed to at mediation and it supersedes all previous

1 agreements.

2 Plaintiff filed a Third Amended Complaint (“TAC”) on April 24, 2019. That TAC is
3 the operative complaint.

4 **II. STATEMENT OF NO ADMISSION OR LIABILITY**

5 Defendant continues to deny any and all liability to the Representative Plaintiff and to
6 the Class Members, and denies that Defendant has violated any laws, including without
7 limitation, sections of the California Labor Code, the California Business & Professions Code,
8 and any IWC Wage Orders referred to above or raised in the Lawsuit. Defendant also denies
9 all charges of wrongdoing or liability against it arising out of the conduct, statements, acts or
10 omissions alleged or which could have been alleged in the Lawsuit. Defendant denies that
11 they or any of their respective officers, directors, members, employees, managers,
12 shareholders, attorneys or representatives have engaged in any Labor Code or Business &
13 Professions Code violation, or that they have engaged in any other unlawful conduct as alleged
14 in the Lawsuit. Defendant also denies, *inter alia*, that the Representative Plaintiff or the Class
15 Members were harmed by the conduct alleged in the Lawsuit. Defendant further denies that
16 the Lawsuit is properly maintainable as a collective action.

17 Defendant has nonetheless concluded that the Lawsuit could be protracted and
18 expensive, and that it is desirable that the Lawsuit be fully and finally settled in the manner
19 and upon the terms and conditions set forth in this Agreement in order to limit further expense
20 and inconvenience; to dispose of burdensome and potentially protracted litigation; and to
21 permit the operation of Defendant’s business without further expensive litigation and the
22 diversion of Defendant’s personnel with respect to the matters at issue in the Lawsuit.

23 Defendant has also taken into account the uncertainty and the risks inherent in any litigation,
24 especially in complex cases like this Lawsuit, and has, therefore, determined that it is desirable
25 and beneficial that the Lawsuit be settled in the manner and upon the terms and conditions set
26 forth in this Agreement.

27 This Agreement does not constitute and shall not be deemed to be a finding or
28 determination by the Court, nor an admission by any party, regarding the merits, validity or

1 accuracy of any of the allegations, claims or defenses. This Agreement represents the
2 compromise of disputed claims that the Parties recognize would require protracted and costly
3 litigation to adjudicate. Defendant's entry into and consent to this Agreement are not and may
4 not be used by any person in any proceeding as an admission or evidence that Defendant
5 and/or their officers, employees, managers, and/or attorneys have on any occasion engaged in
6 illegal employment practices or any other unlawful conduct, such being expressly denied.

7 Neither this Agreement nor the settlement, nor any act performed or document executed
8 pursuant to or in furtherance of this Agreement or the settlement: (i) is or may be deemed to
9 be or may be used as an admission of, or evidence of, the validity of any Released Claim (as
10 defined below), or of any wrongdoing or liability of Defendant or any of the Released Parties
11 (as defined below), or of the propriety of the Class Counsel's maintaining this Lawsuit as a
12 collective action; or (ii) is or may be deemed to be or may be used as an admission of, or
13 evidence of, any fault or omission of Defendant in any civil, criminal or administrative
14 proceeding in any court, administrative agency or other tribunal, other than in such
15 proceedings as may be necessary to consummate or to enforce this Agreement, the settlement
16 or the Judgment, except that Defendant may file this Agreement or the Judgment in any action
17 that may be brought against it in order to support a defense or counter claim based on
18 principles of *res judicata*, *collateral estoppel*, release, judgment bar or reduction or any other
19 theory of claim preclusion or similar defense or counterclaim. The Parties themselves agree
20 not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other
21 judicial, arbitral, administrative, investigative or other forum or proceeding, as purported
22 evidence of any violation of any state, or local law, statute, ordinance, regulation, rule or
23 executive order, or any obligation or duty at law or in equity, or for any other purpose.
24 Notwithstanding the foregoing, this Agreement may be used in any proceeding before the
25 Court that has as its purpose the interpretation, implementation, approval, or enforcement of
26 this Agreement or any orders or judgments of the Court entered in connection with the
27 Lawsuit.

28 None of the documents produced or exchanged in discovery or during the Lawsuit are

1 intended to constitute, an admission by Defendant of any violation of any state, or local law,
2 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in
3 equity.

4 **III. STIPULATION OF CLASS CERTIFICATION UNDER CALIFORNIA
CODE OF CIVIL PROCEDURE SECTION 382**

5 Pursuant to California’s Code of Civil Procedure (“CCP”) § 382, Defendant hereby
6 consents, solely for purposes of this Agreement and proposed settlement, to the conditional
7 certification of a Section 382 Class Action based on the State Law Claims consisting of no
8 more than 520 individuals, (known as “Class Members”):

9 “All persons who are employed or have been employed as an employee by
10 HATHAWAY DINWIDDIE CONSTRUCTION COMPANY, in the State of
11 California who are or were members of the Carpenter’s Local Union #405 from
September 22, 2015 to October 16, 2016. (‘Proposed Class’)”

12 **IV. SETTLEMENT AMOUNT**

13 For and in consideration of the mutual covenants contained herein, the Parties agree,
14 subject to approval by the Court, that Defendant shall, subject to the conditions and releases
15 set forth herein, pay the amount of Six Hundred and Fifty Eight Thousand Six Hundred and
16 Forty Two Dollars and fifty cents (\$658,642.50) (the “Total Settlement Amount”), on an “all-
17 in,” non-reversionary basis to settle the claims asserted in the Lawsuit. The Total Settlement
18 Amount will be used to pay: (1) all class member payments; (2) class representative
19 enhancement; (3) attorneys’ fees and costs to be paid to Class Counsel for the Representative
20 Plaintiff and Class Members; (4) the PAGA payment; and (5) payment to a third party Claims
21 Administrator for Administration Costs (defined below). Counsel for the Parties will jointly
22 select a suitable, experienced “Claims Administrator,” soliciting bids from at least two
23 different claims administrators. All costs associated with notice to the Class Members
24 regarding the settlement, all costs associated with administering the claims procedure, and all
25 costs associated with distribution of the Individual Settlement Amount to the Representative
26 Plaintiff (collectively, “Administration Costs”) shall be paid from the Total Settlement
27 Amount.
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1 The entire amount paid to each Class Member will be treated as penalties on which
2 there will be no tax withholding and for which an IRS Form 1099 (marked “Other Income”)
3 shall be issued if the payment is above the minimum threshold required for the issuance of a
4 Form 1099.

5 Defendant shall deliver the Total Settlement Amount to the third-party Claims
6 Administrator no later than fifteen (15) calendar days after the Court’s entry of Final
7 Approval, unless any timely objections have been filed with the Court; in which case, the
8 Total Settlement Amount shall be due to the third-party Claims Administrator no later than
9 thirty (30) business day after the settlement becomes final.

10 Defendant will not receive reversion of any part of the Total Settlement Amount, unless
11 the settlement is not finally approved by the Court with terms materially identical to the terms
12 articulated herein. In the event the settlement is not given Final Approval by the Court,
13 Defendant will bear only the already-accrued cost of the third party Claims Administrator.

14 Upon payment of the amounts set forth above, Defendant will have no further monetary
15 obligation hereunder to the Representative Plaintiff or the other members of the Settlement
16 Class, or to Class Counsel.

17 **V. FEES AND COSTS OF COUNSEL FOR THE REPRESENTATIVE**
18 **PLAINTIFF AND CLASS MEMBERS**

19 Defendant will not oppose Class Counsel’s request for fees, which are not to exceed
20 one-third (33%) of the Total Settlement Amount, or \$219,547.50. Defendant also will not
21 oppose Class Counsel’s requests for reimbursement of costs, up to \$15,000 (separate and apart
22 from attorney’s fees). These amounts will include all attorneys’ fees, costs, and expenses
23 directly or indirectly related to the Lawsuit, which includes all such fees, costs and expenses
24 incurred to date, as well as all such fees, costs and expenses which may hereafter be incurred
25 in documenting the Agreement and the proposed settlement herein, monitoring and securing
26 the Court’s Preliminary and Final approval of the Agreement and the proposed settlement,
27 obtaining entry of judgment in the Lawsuit, and handling any future work concerning the
28 Agreement, the proposed settlement, or entry of judgment in the Lawsuit.

1 The Parties agree that the Court’s approval or denial of any request for attorney’s fees
2 and costs are not material conditions to this Agreement, and are to be considered by the Court
3 separately from the relief to the Class Members, which shall be based on reasonableness,
4 adequacy, and good faith in settlement. If the Court does not approve attorneys’ fees, costs
5 and expenses, all other terms of this Agreement will remain in full force and effect. Any order
6 or proceeding relating to the application by Class Counsel for an award for fees and costs shall
7 not operate to terminate or cancel this Agreement. To the extent the Court awards less than
8 the amount of attorney’s fees and costs requested by Class Counsel, the remaining amount will
9 be redistributed amongst participating Class Members as part of the Distribution Amount
10 based on the formula described in paragraph IX below.

11 **VI. CLASS REPRESENTATIVE PLAINTIFF’S ENHANCEMENT & RELEASE**

12 Defendant will not oppose Class Counsel’s request for an enhancement to the
13 Representative Plaintiff Moreno, not to exceed Five Thousand Dollars (\$5,000), to be paid out
14 of the Total Settlement Amount. The Parties agree that the Court’s approval or denial of any
15 request for a class representative enhancement is not a material condition to this Agreement,
16 and is to be considered by the Court separately from the relief to the Class Members, which
17 shall be based on reasonableness, adequacy, and good faith in settlement. Any order or
18 proceeding relating to the application by the Class Counsel of an award for a class
19 representative enhancement shall not operate to terminate or cancel this Agreement. To the
20 extent the Court awards less than the amount of the requested for a class representative
21 enhancement amount, the remaining amount will be redistributed amongst participating Class
22 Members on a *pro rata* basis. The Representative Plaintiff will also be entitled to his
23 settlement allocation, as described in Section VIII, *infra*.

24 Upon Final Approval, for and in consideration of the mutual promises, terms and
25 agreements between the Representative Plaintiff, on the one hand, and Defendant, on the other
26 hand, set forth herein, the sufficiency of which consideration is hereby acknowledged, the
27 Representative Plaintiff, on behalf of himself, his heirs, spouses, executors, administrators,
28 attorneys, agents and assigns, hereby fully, finally and forever generally release and discharge

1 Defendant, and their respective parents, subsidiaries, affiliates, officers, directors, managers,
2 employees, shareholders, insurers and attorneys (collectively, the “Released Parties”) from any
3 and all claims, demands, causes of action, suits, liabilities, assessments, judgments, obligations
4 of any kind, whether known or unknown, including without limitation those claims or causes
5 of action that they asserted or could have asserted in the Lawsuit, based on the facts,
6 circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or
7 failures to act alleged in Plaintiff’s Third Amended Complaint, regardless of whether such
8 claims arise under state and/or local law, statute, ordinance, regulation, common law, or other
9 source of law (“the Released Claims”). The Released Claims specifically include, but are not
10 limited to: (1) failure to provide itemized wage statements pursuant to Labor Code section
11 226(a); (2) Penalties Pursuant to Labor Code § 2699(f), and (3) failure to provide employment
12 and payroll records under Labor Code sections 226 and 1198.5 and any other known and
13 unknown claims that were or could have been asserted through the date of Preliminary
14 Approval, as well as any damages, restitution, disgorgement, civil penalties, statutory
15 penalties, taxes, interest or attorneys’ fees resulting therefrom.

16 The Representative Plaintiff agrees he has received all wages, bonuses, severance, and
17 benefits owed to him by Defendant except as may be owed to them as a Class Member. The
18 Representative Plaintiff further agrees the consideration set forth herein constitutes the entire
19 consideration provided to him under this Agreement and that he shall not seek any further
20 compensation or consideration from the Released Parties, or any of them, or from any other
21 person and/or entity for any other claimed damages, costs or attorneys’ fees in connection with
22 the claims encompassed and released by this Agreement. The entire amount paid to the
23 Representative Plaintiff will be treated as penalties and expense reimbursement on which there
24 will be no tax withholding and for which an IRS Form 1099 (marked “Other Income”) shall be
25 issued if the payment is above the minimum threshold required for the issuance of a Form
26 1099.

27 The Representative Plaintiff expressly acknowledges and agrees that these individual
28 releases contained in this Agreement include a waiver of all rights under Section 1542 of the

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California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS/HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Accordingly, if the facts relating in any manner to this Lawsuit and proposed settlement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims.

VII. CLASS MEMBERS' RELEASE

Upon Final Approval, for and in consideration of the mutual promises, terms and conditions by and between the Class Members (except for those who submit timely valid requests for exclusion) and Defendant set forth herein, the sufficiency of which consideration is expressly acknowledged, the Class Members, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents and assigns, do hereby fully, finally and forever release and discharge the Released Parties from any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages, and liabilities that each participating Class Member had, now has, or may hereafter claim to have for those claims or causes of action that were asserted in or could have been asserted in the Lawsuit, as alleged in Plaintiff's Third Amended Complaint, regardless of whether such claims arise under state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Released Claims specifically include, but are not limited to: (1) failure to provide itemized wage statements pursuant to Labor Code section 226(a); (2) Penalties Pursuant to Labor Code § 2699(f) for failure to provide itemized wage statements, that were or could have been asserted during the Class Period.

Payments to Class Members will be allocated as follows: two-thirds as penalties and one-third interest. The entire amount paid to each Class Member will be treated as penalties and interest on which there will be no tax withholding and for which an IRS Form 1099 (marked "Other Income") shall be issued if the payment is above the minimum threshold

1 required for the issuance of a Form 1099. In the event that a court or agency orders tax
2 withholdings each Class Member and Defendant will pay his/her/its respective shares.

3 **VIII. THE PAGA PAYMENT**

4 Plaintiff Moreno and Class Counsel shall submit the Joint Stipulation of Class Action
5 Settlement and Release to the Labor and Workforce Development Agency (“LWDA”) at the
6 time it is submitted to the Court for preliminary approval. The Parties agree that \$50,000 of
7 the Total Settlement Amount shall be allocated as settlement of the claims under PAGA.
8 Seventy-five percent (75%) of that total PAGA payment, or \$37,500, shall be paid to the
9 LWDA pursuant to the provisions of the PAGA. The remaining twenty-five percent (25%) of
10 the total PAGA payment, or \$12,500, shall be distributed to the Settlement Classes as part of
11 the Total Settlement Amount. If the Court reduces the LWDA payment, the un-awarded
12 amount shall be added into the Distribution Settlement Amount to be available to the Class
13 Members for distribution.

14 **IX. SETTLEMENT PAYMENTS AND ALLOCATION**

15 Subject to Court approval of attorneys’ fees and costs, Representative Plaintiff
16 Enhancements, and the PAGA payment, the \$658,642.50 Total Settlement Amount will be
17 apportioned as follows: \$219,547.50 for Class Counsel’s attorneys’ fees; \$15,000 for Class
18 Counsel’s costs; \$12,750.00 for Administration Costs; \$5,000 for Representative Plaintiff
19 Enhancements; \$50,000 as the PAGA payment to the LWDA (with \$12,500 distributed to the
20 Class); and \$368,845.00 to be distributed to Class Members (the “Distribution Amount”). The
21 proposed plan for the Distribution Amount amongst the Class Members is as follows: (1) each
22 Class Member shall receive a pro rata share of the Distribution Amount based on the number
23 of wage statements they received during the Class Period; and (2) the wage statements for
24 each Class Member in the Class will be derived from the hire and termination dates and
25 payroll data contained in the records kept by Defendant in the ordinary course of business
26 during the respective Class Period. As noted above, any unapproved attorneys’ fees, costs, the
27 PAGA Payment, or Representative Plaintiff Enhancements will be added to the Distribution
28 Amount. This is the proposed plan for the Distribution Amount. The Parties agree to

1 distribute the Distribution Amount in a different manner deemed fair and appropriate by the
2 Court. The entire amount paid to each Class Member will be treated as penalties and expense
3 reimbursement on which there will be no tax withholding and for which an IRS Form 1099
4 (marked "Other Income") shall be issued if the payment is above the minimum threshold
5 required for the issuance of a Form 1099. In the event that a court or agency orders tax
6 withholdings each Class Member and Defendant will pay his/her/its respective shares.

7 **X. NOTICE TO CLASS MEMBERS REGARDING SETTLEMENT**

8 Within ten (10) days of the Court's Preliminary Approval of the Agreement and
9 proposed settlement, Defendant will provide the Claims Administrator and Class Counsel a list
10 of all the Class Members belonging to the proposed Class, their social security numbers, their
11 last known mailing addresses, and their last known telephone number). Defendant shall
12 indicate which of the Class Members already received reimbursement payments during their
13 employment with Defendant. The Claims Administrator shall sign an agreement with
14 Defendant to keep this information strictly confidential in a password protected database and
15 shall not disclose it to anyone. Within seven (7) days of receipt of this information, The
16 Claims Administrator shall determine the settlement allocation for each Class Member
17 utilizing the formulas provided in this Agreement.

18 The Claims Administrator shall provide notice to all Class Members via first-class
19 regular U.S. mail. The notice will be in both English and Spanish. Prior to mailing, the
20 Claims Administrator will perform a search based on the National Change of Address
21 Database to update and correct for any known or identifiable address changes. For each notice
22 packet returned as undeliverable, without a forwarding address, the Claims Administrator will
23 perform a "skiptrace" search to obtain an updated address. For each notice packet returned
24 with a forwarding address, the Claims Administrator re-mail the notice packet to that
25 forwarding address within two (2) days of receipt. Included in this mailing will be an
26 envelope addressed to the Claims Administrator, for use by the Class Member in the event
27 they want to object or be excluded from the settlement. (The Settlement Notice and envelope
28 shall be, collectively, the "Settlement Packet.") The Proposed Settlement Packet is attached

1 hereto as Exhibit A. The Settlement Notice will advise Class Members of their minimum
2 settlement allocations and opportunity to object to or opt-out of the settlement. Additionally,
3 the Claims Administrator will set up a website where the Notice Packet, Settlement
4 Agreement, all papers filed with the final and preliminary approval, the operative complaint,
5 and all order regarding approval are available. The Notice will prominently display the URL.

6 Class Members may object to the Agreement. Class Members who wish to object in
7 writing must do so within sixty (60) calendar days after the Settlement Notice is first mailed.
8 However, in the case of a Settlement Notice returned because of an incorrect address or a new
9 forwarding address and re-mailed to an updated address, the Class Member shall have thirty
10 (30) calendar days after the first re-mailing or sixty (60) calendar days after notice was first
11 mailed, whichever is later, to object. Written objections must be sent to the Claims
12 Administrator at the address stated in the Settlement Notice and postmarked on or before the
13 date specified in the Preliminary Approval Order. Class Members wishing to object may also
14 appear at the Final Approval hearing, even if they have not filed a written objection.

15 Class members may exclude themselves, or opt out, of the Agreement. Class Members
16 must do so in writing within sixty (60) calendar days after the Settlement Notice is first
17 mailed. However, in the case of a Settlement Notice returned because of an incorrect address
18 or a new forwarding address and re-mailed to an updated address, the Class Member shall
19 have thirty (30) calendar days after the first re-mailing or sixty (60) calendar days after notice
20 was first mailed, whichever is later, to object. Information on how to opt out of the settlement
21 shall also be made available by the Claims Administrator.

22 The allocation of any Class Members who opt out will be reallocated *pro rata* to the
23 participating Class Members. Any checks that remain uncashed after 180 days will be voided.
24 Any uncashed amounts in excess of \$7,350.00, shall be redistributed amongst the Class
25 Members that cashed their checks on a pro rata basis based on the number of itemized wage
26 statements each Class Member that cashed their check received during the Class Period. The
27 costs associated with this second distribution shall be deducted from the uncashed amounts
28 prior to the second distribution and shall not exceed \$2,750.00. If the uncashed amounts do

1 not exceed \$7,350.00, these amounts shall be allocated pursuant Section 384 of the Code of
2 Civil Procedure, subject to Court approval. The Parties have selected the Homeless Advocacy
3 Project as the cy pres designee. As per Section 384 of the Code of Civil Procedure, in addition
4 to any uncashed funds remaining after the second distribution, Defendant shall pay any interest
5 that has accrued on the uncashed funds.

6 Only Class Members who do not opt out of the proposed settlement shall be eligible to
7 receive a settlement payment pursuant to the terms and conditions of this Agreement. Upon
8 the Final Approval of this Agreement and proposed settlement by the Court, all Class
9 Members who do not opt out of this Settlement shall be bound by all of the provisions of this
10 Agreement and Orders issued pursuant thereto.

11 The Claims Administrator shall have the sole responsibility for mailing the Settlement
12 Packet to all Class Members; receiving and processing all claims; determining eligibility for
13 payment; and promptly furnishing to counsel for the Parties copies of any written or electronic
14 communications received from Class Members. If any Class Member raises a dispute based
15 on the dates of employment used to calculate their specific settlement allocations, the Claims
16 Administrator will promptly inform the Parties. Defendant will then cooperate with Class
17 Counsel to resolve the dispute; however, Defendant's payroll records will be presumptively
18 determinative in any dispute over entitlement to payment or over membership in the Class.

19 **XI. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

20 The amounts paid under this Agreement to any Class Member does not represent a
21 modification of any previously credited hours of service under any employee benefit plan,
22 policy or bonus program sponsored by Defendant. Such amounts will not form the basis for
23 additional contributions to, benefits under, or any other monetary entitlement under, benefit
24 plans (self-insured or not) sponsored by Defendant, policies or bonus programs. Any
25 payments made under the terms of this Agreement and proposed settlement shall not be
26 applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any
27 other form of compensation for the purposes of Defendant's benefit plan, policy or bonus
28 program. Defendant retains the right to modify the language of their benefit plans, policies

1 and bonus programs to effect this intent and to make clear that any amounts paid pursuant to
2 this Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar
3 measuring term as defined by applicable plans, policies and bonus programs for purpose of
4 eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or
5 benefits are not required by this Agreement.

6 **XII. PUBLICITY**

7 The Representative Plaintiff and Class Counsel agree that they have not and will not,
8 disclose or publish this Agreement or proposed settlement (with the exception of a website in
9 which Class Counsel will set up solely for the purposes of providing settlement information to
10 Class Members) to the press, reporters, or general media at any time. As used herein, “press,
11 reporters, or general media” shall refer to and include newspapers, periodicals, magazines,
12 online publications, and television and radio stations and programs, and any representative of
13 the foregoing. Nothing herein shall prevent Class Counsel from communicating with the
14 Representative Plaintiff and Class Members, or from making truthful statements to judicial
15 authorities, regarding the terms of this Agreement the proposed settlement, or the status of the
16 Lawsuit.

17 **XIII. COURT APPROVAL**

18 This Agreement is contingent upon Final Approval by the Court and entry of judgment
19 pursuant to California Rule of Court 3.770 in the Lawsuit. The Parties agree to take all steps
20 as may be reasonably necessary to secure both Preliminary and Final Approval of the
21 Agreement and proposed settlement, to the extent not inconsistent with the terms of this
22 Agreement, and will not take any action adverse to each other in obtaining Court approval,
23 and, if necessary, appellate approval, of the settlement in all respects. Class Counsel agrees to
24 prepare the Preliminary Approval papers, subject to Defendant’s review and approval, within
25 forty-five (45) days of the Parties executing this Agreement, and Class Counsel will request a
26 hearing date as soon as possible (subject to the Court’s calendar). If Defendant does not
27 respond with approval or corrections to the Preliminary Approval papers within seven (7) days
28 of receipt of the papers, Class Counsel can file the Preliminary Approval papers without

1 permission from Defendant. Class Counsel also agrees to prepare the Final Approval papers,
2 with the intention of obtaining Final Approval no more than ninety (90) days after the Court
3 provides Preliminary Approval (subject to the Court's calendar). The Parties expressly agree
4 that they will not file any objection (as opposed to request for correction) to the terms of this
5 Agreement or assist or encourage any person or entity to file any such objection.

6 If there is no Final Approval by the Court of this Agreement, then Defendant shall have
7 no obligation to make any monetary payments to the Representative Plaintiff, the Class
8 Members or Class Counsel under this Agreement, and the Lawsuit shall return to the *status*
9 *quo* that existed before the proposed settlement was reached. In addition, under those
10 circumstances, Defendant shall be entitled to recover any sums it has paid into the Total
11 Settlement Amount account, minus any costs reasonably incurred by the Claims Administrator
12 up until the date at which it is notified that the Agreement will not be approved.

13 **XIX. MISCELLANEOUS PROVISIONS**

14 **A. Stay of Litigation.**

15 The Representative Plaintiff and Defendant agree to the stay of all discovery in the
16 Lawsuit, pending Final Approval of the Agreement and proposed settlement by the Court.

17 **B. Interpretation of the Agreement.**

18 This Agreement constitutes the entire agreement between the Representative Plaintiff
19 and Defendant. Except as expressly provided herein, this Agreement has not been executed in
20 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
21 written representations or terms shall modify, vary or contradict its terms. In entering into this
22 Agreement, the parties agree that this Agreement is to be construed according to its terms and
23 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted
24 and enforced under the laws of the State of California, both in its procedural and substantive
25 aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating
26 to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the
27 Superior Court of California in and for the County of San Francisco, and the Representative
28 Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court over them

1 solely in connection therewith. The Representative Plaintiff and Defendant participated in the
2 negotiation and drafting of this Agreement and had available to them the advice and assistance
3 of independent counsel. As such, neither the Representative Plaintiff nor Defendant may
4 claim that any ambiguity in this Agreement should be construed against the other.

5 The terms and conditions of this Agreement constitute the exclusive and final
6 understanding and expression of all agreements between the Representative Plaintiff and
7 Defendant with respect to the resolution of the Lawsuit. The Agreement may be modified
8 only by a writing signed by the original signatories and approved by the Court.

9 **C. Counterparts.**

10 The Agreement may be executed in one or more actual or non-original counterparts, all
11 of which will be considered one and the same instrument and all of which will be considered
12 duplicate originals.

13 **D. Authority.**

14 Each individual signing below warrants that he or she has the authority to execute this
15 Agreement on behalf of the party for whom or which that individual signs. Class Counsel is
16 expressly authorized by the Representative Plaintiff to take all appropriate actions required or
17 permitted to be taken pursuant to this Agreement to effectuate its terms.

18 **E. No Third Party Beneficiaries.**

19 The Representative Plaintiff, Class Members, Class Counsel and counsel for Defendant
20 are direct beneficiaries of this Agreement, but there are no third party beneficiaries.

21 **F. Force Majeure.**

22 The failure of any party to perform any of its obligations hereunder shall not subject
23 such party to any liability or remedy for damages, or otherwise, where such failure is
24 occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other natural
25 disasters, explosions, floods, wars, interruptions or delays in transportation, power outages,
26 labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions,
27 rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any
28 other similar or different circumstances or causes beyond the reasonable control of such party.

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G. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

H. Severability.

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant and Class Counsel, on behalf of the Parties, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED.

Dated: April , 2019

By: _____
Plaintiff Luis Moreno on behalf of himself and the Proposed Class

Dated: April , 2019

KINGSLEY & KINGSLEY, APC

By: _____
ERIC B. KINGSLEY
LIANE KATZENSTEIN LY
Attorneys for Plaintiff Luis Moreno and The Proposed Class

Dated: April , 2019

HATHAWAY DINWIDDIE CONSTRUCTION COMPANY

By: _____
PAUL DOMMES
Vice-President/Chief Financial Officer

Dated: April , 2019

GORDON & REES SCULLY MANSUKHANI, LLP

By: _____
MOLLIE M. BURKS
HIEU T. WILLIAMS
Attorneys for Defendant
HATHAWAY DINWIDDIE CONSTRUCTION COMPANY

**Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111**

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